

TITLE 710. OKLAHOMA TAX COMMISSION

CHAPTER 50. INCOME

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 50. Income [AMENDED]

SUMMARY:

As part of the Tax Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to implement recent legislation. All legislative references are to the Second Regular Session of the 58th Legislature (2022) unless otherwise indicated.

The proposed amendment to Section 710:50-15-49 implements the provisions of SB 401 which provides for a 100% income tax exemption for retirement benefits received from any component of the Armed Forces of the United States, effective for tax year 2022 and subsequent tax years. [68:2358]

The proposed amendment to Section 710:50-15-63 and promulgation of new Section 710:50-15-118 implements the provisions of HB 3088 which eliminates the existing \$20,000 annual income tax deduction for nonrecurring adoption expenses and enacts a new, refundable income tax credit for nonrecurring adoption expenses, beginning for tax year 2023. [68:2358, 2357.601]

The proposed amendments to Sections 710:50-17-51 and 710:50-21-1 and the promulgation of new Sections 710:50-15-69.1 and 710:50-19-5 implement the provisions of HB 3418 which authorized the decoupling of bonus depreciation; the 100% bonus depreciation rate for qualified property is made permanent and Oklahoma taxpayers may elect to not follow the federal bonus depreciation phase-out schedule. [68:2358.6A]

The proposed amendment to Section 710:50-15-81 implements the provisions of SB 1857 which amended the credit for qualified clean-burning motor vehicle fuel property. [68:2357.22]

Sections 710:50-15-95, 710:50-15-97, 710:50-15-98, 710:50-15-99, 710:50-15-104, 710:50-15-112 have been revoked; these tax incentives have either been repealed or sunsetted and are no longer available and can no longer be claimed on the Oklahoma income tax return. [68: 2357.100, 2357.203, 2357.67, 2357.102, 2357.46, 2357.402,

Other sections may be amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references, which do not change the interpretation or intent of the rules.

AUTHORITY:

68 O.S. §§ 203, 2357.22, 2357.601, 2358.6A; Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to present their views in writing may do so by 4:30 p.m., February 7, 2023, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or

by email to lhaws@tax.ok.gov.

PUBLIC HEARING:

A public hearing is scheduled for 1:30 p.m., on Wednesday, February 8, 2023, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date by calling Lakesha Mackie at (405) 521-3133. Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at <http://www.tax.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at <http://www.tax.ok.gov>.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194. Telephone number: 405-521-3133; Email: lhaws@tax.ok.gov

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME
SUBCHAPTER 13. ESTIMATED TAX

710:50-13-3. Who must make payments of estimated tax; due dates

- (a) Payment of estimated income tax must be made by the following:
- (1) A single individual whose tax liability for the year is estimated to be \$500.00 or more in excess of taxes withheld from wages.
 - (2) Married individuals whose combined tax liability for the year is estimated to be \$500.00 or more in excess of taxes withheld from wages.
 - (3) A corporation or trust whose tax liability for the year is estimated to be \$500.00 or more.
- (b) Initial payments of estimated tax should be made by:
- ~~(4)~~ (1) Calendar-year taxpayers, no later than April 15th.
 - ~~(5)~~ (2) Fiscal-year taxpayers, by the fifteenth day of the fourth month following the beginning of the taxable year. [See: 68 O.S. § 2385.7]

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME
PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-49. Deduction for retirement income

(a) **General provisions applicable to Oklahoma or federal government retirement income.** Each individual taxpayer may deduct up to Five Thousand Five Hundred Dollars ~~(\$5,500.00)~~ \$10,000 of retirement benefits paid by the State of Oklahoma or by the federal government. ~~Effective for tax years beginning on or after January 1, 2005, and ending before January 1, 2006, this deduction increases to Seven Thousand Five Hundred Dollars (\$7,500.00). Effective for tax year 2006 and subsequent tax years the deduction increases to Ten Thousand Dollars (\$10,000.00).~~ This deduction cannot exceed the amount included in the taxpayer's ~~Federal Adjusted Gross Income~~ federal adjusted gross income. The total exclusion from all government retirement benefit plans may not exceed ~~Five Thousand Five Hundred Dollars (\$5,500.00), or for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred Dollars (\$7,500.00); or for tax years beginning on or after January 1, 2006, Ten Thousand Dollars (\$10,000.00),~~ \$10,000 per individual.

(b) **Qualifying Oklahoma or federal government retirement income defined.** For purposes of this Section, "Oklahoma or federal government retirement income" means retirement income received from the following sources:

- (1) The Civil Service of the United States;
- (2) Any Component of the Armed Forces of the United States; [See special rule (g)]
- (3) The Oklahoma Public Employees' Retirement System;
- (4) The Oklahoma Teachers' Retirement System;
- (5) Oklahoma Law Enforcement Retirement System;
- (6) Oklahoma Firefighters' Pension and Retirement System;

- (7) Oklahoma Police Pension and Retirement System;
- (8) The Employee retirement systems created by counties pursuant to 19 O.S. §§951 et seq.
- (9) The Uniform Retirement System for Justices and Judges;
- (10) The Oklahoma Wildlife Conservation Department Retirement Fund;
- (11) The Oklahoma Employment Security Commission Retirement Plan; or,
- (12) The Employee retirement systems created by municipalities pursuant to 11 O.S. §§ 48-101 et seq.

(c) **Disability income; state and federal government retirees.** Disability retirement benefits received by an individual from sources listed in subsection (b) shall qualify for the retirement income deduction, without regard to the recipient's age.

(d) **General provisions for other retirement income.** Each individual taxpayer aged ~~sixty-five (65) and over~~ may deduct up to ~~Five Thousand Five Hundred Dollars (\$5,500.00)~~ \$10,000 of other retirement benefits received and included in Federal Adjusted Gross Income federal adjusted gross income through tax year 2004. Effective for tax years beginning on or after January 1, 2005, this deduction increases to ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ and the taxpayer is no longer required to be sixty-five (65) years of age. Effective for tax year 2006 and subsequent tax years the deduction increases to ~~Ten Thousand Dollars (\$10,000.00)~~. This deduction cannot exceed the amount included in the taxpayer's Federal Adjusted Gross Income federal adjusted gross income. The total exclusion from all retirement benefit plans may not exceed ~~Five Thousand Five Hundred Dollars (\$5,500.00)~~ or, for tax years beginning on or after January 1, 2005, ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~, or for tax years beginning on or after January 1, 2006, ~~Ten Thousand Dollars (\$10,000.00)~~ \$10,000 per individual.

~~(1) **Income eligibility levels for tax years through 2004.** In order to qualify for this exclusion, Oklahoma Adjusted Gross Income cannot exceed Twenty Five Thousand Dollars (\$25,000.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed Fifty Thousand Dollars (\$50,000.00) in order to qualify for the exclusion.~~

~~(2) **Income eligibility levels for tax years 2005 and 2006.** Effective for tax years beginning on or after January 1, 2005 and ending prior to January 1, 2007, Oklahoma Adjusted Gross Income cannot exceed Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed Seventy Five Thousand Dollars (\$75,000.00) in order to qualify for the exclusion.~~

~~(3) **Income eligibility levels for tax year 2007.** Effective for tax years beginning on or after January 1, 2007 and ending before January 1, 2008, Oklahoma Adjusted Gross Income cannot exceed Fifty Thousand Dollars~~

~~(\$50,00.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed One Hundred Thousand Dollars (\$100,000.00) in order to qualify for the exclusion.~~

~~(4) **Income eligibility levels for tax year 2008.** Effective for tax years beginning on or after January 1, 2008 and ending before January 1, 2009, Oklahoma Adjusted Gross Income cannot exceed Sixty Two Thousand Five Hundred Dollars (\$62,500.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed One Hundred Twenty Five Thousand Dollars (\$125,000.00) in order to qualify for the exclusion.~~

~~(5) **Income eligibility levels for tax year 2009.** Effective for tax years beginning on or after January 1, 2009 and ending before January 1, 2010, Oklahoma Adjusted Gross Income cannot exceed One Hundred Thousand Dollars (\$100,000.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed Two Hundred Thousand Dollars (\$200,000.00) in order to qualify for the exclusion.~~

~~(6) **Income eligibility levels for tax year 2010 and subsequent years.** Effective for tax years beginning on or after January 1, 2010, there are no longer any income eligibility requirements to qualify for the exclusion.~~

(e) **"Qualifying other retirement income" defined.** For purposes of this Section "other retirement income" must be received from the following and satisfy the requirements of the Internal Revenue Code (IRC):

- (1) An employee pension benefit plan under IRC Section 401;
- (2) An eligible deferred compensation plan under IRC Section 457;
- (3) An individual retirement account, annuity, or trust or simplified employee pension under IRC Section 408;
- (4) An employee annuity under IRC Section 86; or,
- (5) Lump-sum distributions from a retirement plan under IRC Section 402(e).

(f) **Disability income; private sector retirees.** Disability retirement benefits received by an individual shall qualify for the retirement income deduction, without regard to the recipient's age.

(g) **Special rule for certain retirement income from a component of the Armed Forces of the United States.** Effective for tax year 2006, the deduction for retirement income from any component of the Armed Forces of the United States is the greater of Ten Thousand Dollars (\$10,000.00) or fifty percent (50%) of the amount included in the taxpayer's ~~Federal Adjusted Gross Income~~ federal adjusted gross income. Effective for tax year 2007 and subsequent tax years, the deduction for retirement income from any component of the Armed Forces of the United States is the greater of Ten Thousand Dollars (\$10,000.00) or seventy-five percent (75%) of the amount included in the taxpayer's ~~Federal~~

~~Adjusted Gross Income~~ federal adjusted gross income. For tax year 2022 and subsequent tax years, retirement benefits received by an individual from any component of the Armed Forces of the United States shall be exempt from taxable income.

(h) **Special rule for Federal civil service retirement income.** Beginning with tax year ~~2007~~ 2011, retirement benefits received by Federal ~~federal~~ civil service retirees, including survivor annuities paid in lieu of Social Security benefits, are allowed to be excluded from Oklahoma taxable income to the extent such benefits are included in the taxpayer's Federal ~~Adjusted Gross Income~~ federal adjusted gross income, pursuant to the provisions of Section 86 of the Internal Revenue Code. ~~For tax year 2007, twenty percent (20%) of such taxable benefits will be excludable. For tax year 2008, forty percent (40%) of such taxable benefits will be excludable. For tax year 2009, sixty percent (60%) of such taxable benefits will be excludable. For tax year 2010, eighty percent (80%) of such taxable benefits will be excludable. For tax year 2011 and subsequent tax years, one hundred percent (100%) of such taxable benefits will be excludable.~~

710:50-15-63. Deduction for nonrecurring adoption expenses

(a) **General provisions.** In taxable years beginning after December 31, 1995, and ending before January 1, 2003, a deduction is allowed to resident individual taxpayers for nonrecurring adoption expenses, not to exceed ten thousand dollars (\$10,000.00) per calendar year, paid in connection with the adoption of a minor, or proposed adoption of a minor which did not result in a decreed adoption. Effective for taxable years beginning after December 31, 2002, and ending before January 1, 2023, the deduction for nonrecurring adoption expenses shall not exceed Twenty Thousand Dollars (\$20,000.00) per calendar year.

(b) **Allowable expenses.** For purposes of this Section "nonrecurring adoption expenses" means and includes:

- (1) Adoption fees;
- (2) Court costs;
- (3) Medical expenses;
- (4) Attorney fees;
- (5) Expenses directly related to the legal process of the adoption of a child and are not reimbursed by other sources, to include, but not limited to costs related to:
 - (A) The adoption study;
 - (B) Health and psychological examinations;
 - (C) Transportation and reasonable costs of food and lodging for the child or adoptive parents which are incurred to complete the adoption process. Transportation expense by either commercial or private means may be claimed based upon actual unreimbursed costs incurred, or in the case of travel by private means, the mileage rate allowed pursuant to the Internal Revenue Code for determining business travel expense may be elected.
- (6) Costs associated with physical remodeling, renovation, or alteration of the

adoptive parents home or property, if incurred in conjunction with the adoption of a special needs child, as authorized by the court.

(c) **"Nonrecurring adoption expenses"** shall not mean or include:

(1) Costs reimbursed by other sources.

(2) Attorney fees incurred from and after the commencement of an action involving a contest of an adoption.

(3) Costs associated with physical remodeling, renovation, or alteration of the adoptive parent's home or property, with the exception noted in (b)(6) of this Section.

(d) **Verification.** A schedule describing the expenses claimed must be enclosed and filed with the claimant's tax return. Receipts supporting the claimed expenses are not required to be submitted with the tax return and descriptive schedule, but must be retained and be available upon request by the Commission.

710:50-15-69.1 Add-back of federal depreciation for Oklahoma income tax purposes

For tax years beginning on or after January 1, 2023, taxpayers have the option for immediate and full expensing of qualified property and qualified improvement property by deducting the full cost of these expenditures in the tax year in which the cost is incurred or the property is placed in service. [68 O.S. § 2358.6A] If this option is taken, amounts that are depreciated for federal income tax purposes shall be added back to Oklahoma taxable income in the year the depreciation is claimed. The taxpayer's decision to use immediate expensing for a qualified property or qualified improvement property in the year the investment cost is incurred is irrevocable for the property unless specifically authorized by the Oklahoma Tax Commission.

PART 7. CREDITS AGAINST TAX

710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property

(a) **Definitions.** For purposes of the clean-burning motor vehicle fuel property credit, ~~"motor"~~ The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Motor vehicle"** *means a motor vehicle originally designed by the manufacturer to operate lawfully and principally on streets and highways.*

[See: 68 O.S. § 2357.22(C)] "Vehicle" shall not mean conveyor belts, forklifts, riding mowers, tractors, or other similar items.

(2) **"Qualified clean-burning motor vehicle fuel property"** shall be defined as in Section 2357.22 of Title 68 of the Oklahoma Statutes.

(b) **General provisions.** For tax years 2028 and before, there shall be allowed a one-time nonrefundable income tax credit for investments in qualified clean-burning motor vehicle fuel property placed in service on or after January 1, 1991. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit.

Property on which the credit has previously been claimed is ineligible for the credit.

(c) Amount of credit.

(1) For the qualified clean-burning motor vehicle fuel property defined in 68 O.S. Supp. 2022, §2357.22 (B)(1), (2) or (5), the amount of the credit shall be as follows based upon gross vehicle weight of the qualified vehicle:

(A) For vehicles up to or below 6,000 pounds, the credit shall be a maximum of \$5,500.00,

(B) For vehicles between 6,001 pounds to 10,000 pounds, the credit shall be a maximum amount of \$9,000.00,

(C) For vehicles of 10,001 pounds, but not in excess of 26,500 pounds, the credit shall be a maximum amount of \$26,000.00, and

(D) For vehicles in excess of 26,501 pounds, the credit shall be a maximum amount of \$100,000.00.

(2) For qualified clean-burning motor vehicle fuel property defined in 68 O.S. Supp. 2022, § 2357.22(B)(3), a per location credit of 45% of the cost of the qualified clean-burning motor vehicle fuel property.

(3) For qualified clean-burning motor vehicle fuel property defined in 68 O.S. Supp. 2022, § 2357.22(B)(4), a per location credit of the lesser of 50% of the cost of the qualified clean-burning motor vehicle fuel property or \$2,500.00.

(d) **Carryforward.** Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.

~~(b)~~ **(e) Limitations of eligibility.** No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S. §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]

~~(c)~~ **(f) Sunset date.** This credit will only be available through tax years beginning before December 31, ~~2027~~ 2028.

~~(d)~~ **(g) Tax credit limitation.**

(1) For tax years ~~beginning on or after January 1, 2020 through 2022~~, the total amount of credits used to offset tax shall be adjusted annually to limit the annual amount of credits to ~~Twenty Million Dollars (\$20,000,000.00)~~ \$20,000,000.00.

(2) For tax years 2023 through 2028, the total amount of credits used to offset tax shall be adjusted annually to limit the annual amount of credits to:

(A) \$10,000,000.00 for qualified clean burning fuel property propelled by compressed natural gas, liquefied natural gas, or liquefied petroleum gas, property related to the delivery of compressed natural gas, liquefied natural gas or liquefied petroleum gas, and property directly related to the compression and delivery of natural gas;

(B) \$10,000,000.00 for property originally equipped so that the vehicle may

be propelled by a hydrogen fuel cell electric fueling system and property directly related to the delivery of hydrogen; and

(C) \$10,000,000.00 for property which is a metered-for-fee, public access recharging system for motor vehicles propelled in whole or in part by electricity.

(3) The Tax Commission shall annually calculate and publish by the first day of the affected taxable year a percentage by which the credits shall be reduced so the total amount of credits used to offset tax does not exceed Twenty Million Dollars (\$20,000,000.00) per year each of the limits provided in subsection (g).

710:50-15-95. Poultry litter credit [REVOKED]

~~(a) **General provisions.** Effective for tax years beginning on or after January 1, 2005, and ending on or before December 31, 2009 an income tax credit is established for the purchase and transportation of poultry litter. The credit is five dollars (\$5.00) per ton of poultry litter purchased and transported. Effective for tax years beginning on or after January 1, 2010, and ending on or before December 31, 2013 the credit is Ten Dollars (\$10.00) per ton of poultry litter purchased and transported. Any unused credit may be carried over for up to five (5) years.~~

~~(b) **Qualification.** In order to qualify for the credit the poultry litter must:~~

~~(1) Be purchased from a registered, Oklahoma based poultry operation located within an environmentally sensitive and nutrient-limited watershed;~~

~~(2) Be used or spread in a watershed that is not environmentally sensitive and nutrient-limited; and,~~

~~(3) Be applied by a certified poultry waste applicator and in a manner consistent with the Animal Waste Management Plan.~~

~~(c) **Limitation.** The sum total of all such credits claimed cannot exceed Three Hundred Seventy-five Thousand Dollars (\$375,000.00) annually, for all claimers of the credit.~~

~~(d) **Tax credit moratorium.** No credit may be claimed for purchases occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for poultry litter purchased and transported on or after July 1, 2012.~~

710:50-15-97. Credit for qualified direct costs of a business enterprise of specially trained canines [REVOKED]

~~(a) **General provisions.** An Oklahoma income tax credit of fifty percent (50%) of the qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines is allowed, for expenditures made before November 1, 2013. In order to qualify for the credit the business enterprise must meet certain eligibility requirements.~~

~~(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~(1) **"Nonqualified operating expenditures"** means labor costs, salary and other compensation, whether direct or indirect, paid to directors, officers, limited liability company members, limited liability company managers, partners or other principals or employees of the business entity;~~

~~(2) **"Qualified direct costs"** means expenditures, other than nonqualified operating expenditures, to construct dog kennels, fences, pens, training areas for canines, structures for office space or other improvements to real property necessary for the proper training of a specially trained canine, including the cost of food, water, veterinary expenses and other costs directly related to the operation of the training facility; and~~

~~(3) **"Specially trained canines"** means dogs that are raised by a person who is officially licensed as a dog breeder by the United States Department of Agriculture.~~

~~(c) **Qualification.** In order to qualify for the credit, applicant must have:~~

~~(1) An official copy of the United States Department of Agriculture dog breeder license; and~~

~~(2) Documentation showing that the business enterprise's principal purpose is the rearing of _____ specially trained canines. Also, a written description of the services of the organization, as _____ may be evidenced by copies of:~~

~~(A) Articles of incorporation;~~

~~(B) By-laws;~~

~~(C) Brochure; or~~

~~(D) Notarized letter from the President or Chairman of the business enterprise.~~

~~(3) Evidence of qualification must be provided to the Oklahoma Tax Commission upon request.~~

~~(d) **Computation of credit.** The taxpayer must attach a schedule showing qualified direct costs to the Oklahoma Income Tax Return. The allowed credit is equal to fifty (50%) of the "qualified direct costs". Receipts for all "qualified direct costs" must be provided to the Oklahoma Tax Commission upon request.~~

~~(e) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used any tax year may be carried over, in order, to each of the five (5) subsequent taxable years. The credit is also not transferable.~~

~~(f) **Tax credit moratorium.** No credit may be claimed for any expenditure occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for expenditures occurring on or after July 1, 2012 for qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines.~~

710:50-15-98. Credits for biodiesel production [REVOKED]

~~(a) **General provisions.** For tax years beginning after December 31, 2004 and before January 1, 2013, there is an income tax credit for biodiesel production at certain biodiesel facilities.~~

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Biodiesel"** is any diesel equivalent biofuel made from renewable materials such as vegetable oils or animal fats.

(2) **"Biodiesel facility"** is a plant or facility primarily engaged in the production of biodiesel derived from animal fats, grain components, coproducts, or byproducts. The facility must be located within the State of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of a biodiesel facility. Capacity must be specified as gallons of biodiesel produced per year.

(c) **Basic credit.** Any biodiesel facility which is in production at the rate of at least twenty five percent (25%) of its name plate design capacity for the production of biodiesel, on or before December 31, 2008 is eligible for a credit in the amount of twenty cents (\$0.20) per gallon of biodiesel produced for the first sixty (60) months provided the biodiesel facility maintains an average production rate of at least twenty five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents (\$0.20) per gallon of biodiesel produced expires for production after December 31, 2013.

(d) **Excess production credit.** Any biodiesel facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents (\$0.20) per gallon of biodiesel produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after July 1, 2005 and before December 31, 2008. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2013.

(e) **Credit for production after December 31, 2013.** For production of biodiesel after December 31, 2013 a biodiesel facility may receive an income tax credit in the amount of seven and one half cents (\$0.075) per gallon of biodiesel, for new production for a period not to exceed thirty six (36) consecutive months:

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2011, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2012, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2012, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of biodiesel production at a biodiesel facility during the twenty four month period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any

~~twelve consecutive month period beginning no sooner than January 1, 2012.~~

~~(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the biodiesel production records as are necessary to reasonably determine the level of new production.~~

~~(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.~~

~~(1) The Credit for Biodiesel Production Facilities is only allowed for biodiesel that is produced at a plant at which all biodiesel esterification takes place.~~

~~(2) Not more than twenty-five million (25,000,000) gallons of biodiesel produced annually at a biodiesel facility shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2011.~~

~~(3) Not more than ten million (10,000,000) gallons of biodiesel produced during any twelve consecutive month period at a biodiesel facility shall be eligible for credit for production after December 31, 2011. The credit for production after December 31, 2011 may only be claimed by a producer for production that occurs on or before December 31, 2014.~~

~~(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.~~

~~(g) **Carryover.** Any credits allowed under this Section but not used may be carried forward as a credit against subsequent income tax liability for a period not exceeding five (5) years, beginning July 1, 2009.~~

~~(h) **Tax credit moratorium.** No credit may be claimed for any biodiesel production during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for biodiesel production at certain biodiesel facilities produced on or after July 1, 2012.~~

710:50-15-99. Dry fire hydrant credit [REVOKED]

~~(a) **General provisions.** For tax years beginning after December 31, 2005, there is allowed a credit against the tax imposed by 68 O.S. Section 2355 for the cost of the purchase of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma, purchased before January 1, 2014.~~

~~(b) **Definitions.** "Dry fire hydrant" means nonpressurized pipes permanently installed in lakes, farm ponds, and streams that provide a ready means of drawing water.~~

~~(c) **Qualification.** In order to qualify for the credit, the dry fire hydrants or new water storage facilities must meet the following criteria:~~

~~(1) Each body of water or water storage structure must be able to provide two~~

~~hundred fifty (250) gallons per minute for a continuous two-hour period during a fifty year drought or freeze at a vertical lift of eighteen (18) feet for each body of water or water storage structure.~~

~~(2) Each dry fire hydrant must be located within twenty five (25) feet of an all-weather roadway and accessible to fire protection equipment.~~

~~(3) Dry fire hydrants must be located at a reasonable distance from other dry or pressurized hydrants.~~

~~(d) **Certification.** The Oklahoma Tax Commission will receive certifications from The State Fire Marshall's Office. Allowed credits will be based on these certifications. The Taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return.~~

~~(e) **Computation of credit.** Upon certification, the allowed credit shall be equal to fifty percent (50%) of the purchase price of a dry fire hydrant or the actual expenditure for the new water storage construction, equipment, development and installation of the dry hydrant or new water storage facility.~~

~~(f) **Limitations.** The amount of credit allowed pursuant to this Section shall not exceed \$5,000.00 for each taxpayer and any credit allowed but not used in any tax year may be carried over, in order, to each of the four (4) years following the year of qualification.~~

~~(g) **Tax credit moratorium.** No credit may be claimed for purchases occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for purchases on or after July 1, 2012 of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma.~~

710:50-15-104. Credit for construction of energy efficient residential property [REVOKED]

~~(a) **General provisions.** Effective for the time period beginning on or after January 1, 2006, and ending on or before July 1, 2016, a credit is available for contractors who construct either energy efficient residential property or energy efficient manufactured homes. The credit is dollar for dollar based on the cost of certain eligible expenditures.~~

~~(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~(1) **"Contractor"** is the taxpayer who actually constructed the residential property or manufactured home. In cases if more than one person qualifies as the contractor, the primary contractor.~~

~~(2) **"Eligible energy efficient residential property"** means a newly constructed residential property or manufactured home property located in the State of Oklahoma. Further the home cannot exceed two thousand (2,000) square feet in order to be eligible for the credit. The eligible energy efficient residential property must be substantially complete after December 31, 2005.~~

~~(3) **"Eligible expenditure"** includes the cost of energy efficient heating or cooling systems, insulation material specifically designed to reduce the heat gain or loss of a residential property, exterior windows, exterior doors or metal roofs with appropriate pigmented coatings designed to reduce the heat gain which meets Energy Star program requirements.~~

~~(4) **"Home energy ratings"** means a confirmed rating involving an on-site inspection of a home by a residential energy efficiency professional trained and certified by a Residential Energy Services Network accredited home energy rater.~~

~~(5) **"Residential energy services network provider"** means an accredited home energy inspector certified by Residential Energy Services Network.~~

~~(6) **"Residential property"** means a single dwelling unit, duplex, or townhouse with three stories or less, that provides independent living and could be sold or leased as separate property. The term does not include Group R-2 and R-4 residential buildings as defined in the International Energy Conservation Code.~~

~~(7) **"Substantially complete"** means the residential property or manufactured home has a certificate of occupancy issued if located in a municipality. For residential property or manufactured home in non-metropolitan area, the property will be substantially complete after passing the appropriate inspections required under the applicable County Building Codes permitted under 19 O.S. § 863.44.~~

~~(c) **Amount of credit.**~~

~~(1) The credit is capped at Four Thousand Dollars (\$4,000) for those residential properties that are certified at forty percent (40%) or above of the International Energy Conservation Code 2003 and any supplement in effect at the time of completion. If the residential property is certified between twenty percent (20%) and thirty nine (39%) of the International Energy Conservation Code of 2003 and any supplement in effect at the time of completion, the credit is limited to Two Thousand Dollars (\$2,000.00).~~

~~(2) The credit is not available if the residential property is in excess of Two Thousand (2,000) square feet.~~

~~(d) **Carryover provisions.** Any credit allowed pursuant to the Section, to the extent not used, may be carried over in order to each of the four (4) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.~~

~~(e) **Transfer of the credit.** Effective for credits earned on or after August 25, 2006, the credit for construction of energy efficient residential property may be transferred.~~

~~(f) **Tax credit moratorium.** No credit may be claimed for any expenditure made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. A credit will be allowed for eligible expenditures made prior to July 1, 2010 regardless of when the property is substantially complete. This credit may be claimed for tax year 2012 and subsequent tax years, for eligible expenditures made on or after July 1, 2012, by~~

~~contractors who construct either energy efficient residential property or energy efficient manufactured homes.~~

~~(g) **Termination of the credit.** No credit may be claimed for any expenditure made on or after July 1, 2016 for which the credit would otherwise be allowable. The credit shall be allowed for eligible expenditures made prior to July 1, 2016; however, the property must be substantially complete before January 1, 2017.~~

710:50-15-112. Credit for electric motor vehicle manufacturers [REVOKED]

~~(a) **General provisions.** Electric motor vehicle manufacturers may claim a one-time income tax credit for electric motor vehicles, medium-speed electric motor vehicles and low-speed electric motor vehicles manufactured after June 30, 2010, and before January 1, 2014.~~

~~(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~(1) **"Electric motor vehicle"** means a new motor vehicle originally equipped to be propelled only by electricity and that may be legally operated on both interstate highways and turnpikes in this state and that is eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act. The term does not include medium-speed electric motor vehicles, or low-speed electric motor vehicles;~~

~~(2) **"Electric motor vehicle manufacturer"** means an entity that has received a manufacturer exemption permit pursuant to the provisions of 68 O.S. § 1359.2. Adding modifications to existing electric motor vehicles, existing medium-speed electric motor vehicles or existing low-speed electric motor vehicles shall not be considered manufacturing for purposes of this section;~~

~~(3) **"Low-speed electric motor vehicle"** means a new four-wheeled electrical vehicle that is powered by an electric motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour but not greater than twenty-five (25) miles per hour and is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act; and~~

~~(4) **"Medium-speed electric motor vehicle"** means any self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one (1) mile is more than thirty (30) miles per hour but not greater than thirty-five (35) miles per hour and, other than the speed requirement, is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act.~~

~~(c) **Computation of credit.**~~

~~(1) An electric motor vehicle manufacturer is allowed a per vehicle-manufactured credit of Two Thousand Dollars (\$2,000.00) for an electric~~

motor vehicle;

~~(2) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of One Thousand Dollars (\$1,000.00) for a medium-speed electric motor vehicle; and~~

~~(3) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of Five Hundred Dollars (\$500.00) for a low speed electric motor vehicle.~~

~~(d) **Limitations.** The credit shall not be claimed with respect to any one vehicle based upon multiple definitions as set out in this Section even if such vehicle would otherwise qualify for tax credits based upon qualification pursuant to more than one definition.~~

~~(e) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds a taxpayer's liability, unused credits may be carried over for five (5) succeeding years.~~

710:50-15-118. Credit for nonrecurring adoption expenses

(a) **General provisions.** In taxable years beginning after December 31, 2022, an income tax credit is allowed to resident individual taxpayers for nonrecurring adoption expenses, not to exceed \$2,000 (\$4,000 for a married filing joint return) per calendar year, paid in connection with the adoption of a minor, or proposed adoption of a minor which did not result in a decreed adoption.

(b) **Allowable expenses.** For purposes of this Section "nonrecurring adoption expenses" means and includes:

(1) Adoption fees;

(2) Court costs;

(3) Medical expenses;

(4) Attorney fees;

(5) Expenses directly related to the legal process of the adoption of a child and are not reimbursed by other sources, to include, but not limited to costs related to:

(A) The adoption study;

(B) Health and psychological examinations;

(C) Transportation and reasonable costs of food and lodging for the child or adoptive parents which are incurred to complete the adoption process. Transportation expense by either commercial or private means may be claimed based upon actual unreimbursed costs incurred, or in the case of travel by private means, the mileage rate allowed pursuant to the Internal Revenue Code for determining business travel expense may be elected.

(6) Costs associated with physical remodeling, renovation, or alteration of the adoptive parents' home or property, if incurred in conjunction with the adoption of a special needs child, as authorized by the court.

(c) **"Nonrecurring adoption expenses"** shall not mean or include:

(1) Costs reimbursed by other sources.

(2) Attorney fees incurred from and after the commencement of an action

involving a contest of an adoption.

(3) Costs associated with physical remodeling, renovation, or alteration of the adoptive parent's home or property, with the exception noted in (b)(6) of this Section.

(d) **Verification.** A schedule describing the expenses claimed must be enclosed and filed with the claimant's tax return. Receipts supporting the claimed expenses are not required to be submitted with the tax return and descriptive schedule, but must be retained and be available upon request by the Commission.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to ~~Federal~~ federal taxable income to arrive at Oklahoma taxable income for corporations: [**See:** 68 O.S. § 2358]

(1) **Taxes based on income.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

(ii) Foreign Income Taxes, and

(iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** ~~Federal Income Taxes~~ federal income taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A ~~Federal~~ federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [**See:** 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a ~~Federal~~ federal NOL carryback from the same loss year to the same carryback year.

(l) For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2007, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code; and

(II) For tax years beginning after December 31, 2007, and ending before January 1, 2009, the loss carryback period shall be for a period of two (2) years; and

(III) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no ~~Federal~~ federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a ~~Federal~~ federal loss.

(B) Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981. The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to ~~Federal~~ federal loss. (If no ~~Federal~~ federal loss, there is no NOL allowable.) This percentage is then applied to the ~~Federal~~ federal NOL (each loss year separately) when it is taken (absorbed) on the filed ~~Federal Return~~ federal return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed ~~Federal Return~~ federal return year.

(5) Oklahoma accrued income tax.

(A) Oklahoma will allow a deduction for Oklahoma ~~Accrued Income Tax~~ accrued income tax. The Oklahoma ~~Accrued Income Tax~~ accrued income tax is computed as follows:

(i) Divide the Oklahoma net income by the number 26 for tax years beginning before January 1, 1985.

(ii) Divide the Oklahoma net income by the number 21 for tax years beginning after December 31, 1984 and ending before January 1, 1990.

(iii) Divide the Oklahoma net income by the number 17.667 for tax years beginning after December 31, 1989 and ending before January 1, 2022.

(iv) Divide the Oklahoma net income by the number 26 for tax years beginning after December 31, 2021.

(B) There is no deduction for Oklahoma accrued income tax when Oklahoma net income is a loss. **[See: 68 O.S. § 2358(A)(5)]** When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the

accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income.

(A) An adjustment is required when a corporation has an investment in assets which produce income which is non-unitary, or separately allocable. Such items may include, but are not limited to, investments in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income.

(B) A ratio is used to allocate expenses between unitary business operations and all other activities that do not produce unitary income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is allocable, by the average of total assets. This percentage is then applied to certain expenses claimed on the return to arrive at the amount of expenses related to non-unitary business, and the resulting amount is added back to federal taxable income.

(C) Generally, interest expense is the only expense against which the adjustment described in subparagraph (B) of this paragraph is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)] [See example in Appendix E of this Chapter]

(7) **Interest income.**

(A) **U.S. obligations.** Interest income from U.S. obligations is excluded from ~~Federal~~ federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to ~~Federal~~ federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [See: 68 O.S. § 2358(A)(4)(b)]

(A) For purposes of calculating Oklahoma taxable income, foreign earnings deemed repatriated pursuant to 26 U.S.C. § 965 shall be

considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(i) To the extent such income is not included in the calculation of a taxpayer's federal taxable income due to inclusion on an IRC 965 Transition Tax Statement rather than the income tax return, the income shall be included on the Oklahoma return as an addition to net taxable income.

(ii) If a taxpayer elects to make installment payments of tax pursuant to the provisions 26 U.S.C. § 965, such election may also apply to the payment of Oklahoma income tax, attributable to the income upon which such installment payments are based.

(B) For purposes of calculating Oklahoma taxable income, global intangible low-taxed income included in federal income pursuant to 26 U.S.C. § 951A shall be considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [See: 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, and for tax years beginning on or after January 1, 2014, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty percent (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the ~~Federal Income Tax Return~~ federal income tax return. [See: 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net rental income is separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) A schedule of net rental income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

- (13) **Royalties; patents; copyrights.** [See: 68 O.S. § 2358(A)(5)]
- (A) Income from patent or copyright royalties is apportionable.
 - (B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.
- (14) **Capital gains or loss - 4797 gains or loss.**
- (A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [See: 68 O.S. § 2358(A)(5)]
 - (B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.
- (15) **Partnership income or loss from corporate partners.**
- (A) Partnership income or loss shall be separately allocated. [See: 68 O.S. § 2358(A)(4)]
 - (B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.
- (16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [See: 68 O.S. § 2366]
- (17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.
- (18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [See: 68 O.S. § 2358(A)(4)]
- (19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.
- (20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [See: 68 O.S. § 2358(A)(5)]
- (21) **Add-back of federal bonus depreciation for Oklahoma Income Tax income tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the provisions of the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma ~~Income Tax~~ income tax purposes.
- (A) Corporations filing Oklahoma ~~Income Tax Returns~~ income tax returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers*

Assistance Act of 2002, the federal Economic Stimulus Act of 2008 or the federal American Recovery and Reinvestment Act of 2009). Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

(22) **Add-back of applicable Section 179 expenses.** For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars (\$175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as provided in the federal *American Recovery and Reinvestment Act of 2009* must be added back to Oklahoma taxable income.

(23) **Add-back of federal depreciation for Oklahoma income tax purposes.** For tax years beginning on or after January 1, 2023, taxpayers have the option for immediate and full expensing of qualified property and qualified improvement property by deducting the full cost of these expenditures in the tax year in which the cost is incurred or the property is placed in service. [68 O.S. § 2358.6A] If this option is taken, amounts that are depreciated for federal income tax purposes shall be added back to Oklahoma taxable income in the year the depreciation is claimed. The taxpayer's decision to use immediate expensing for a qualified property or qualified improvement property in the year the investment cost is incurred is irrevocable for the property unless specifically authorized by the Oklahoma Tax Commission.

SUBCHAPTER 19. OKLAHOMA TAXABLE INCOME FOR PARTNERSHIPS

710:50-19-5 Add-back of federal depreciation for Oklahoma income tax purposes

For tax years beginning on or after January 1, 2023, partnerships have the option for immediate and full expensing of qualified property and qualified improvement property by deducting the full cost of these expenditures in the tax year in which the cost is incurred or the property is placed in service. [68 O.S. § 2358.6A] If this option is taken, amounts that are depreciated for federal income tax purposes shall be added back to the Oklahoma distributive share of partnership income in the year the depreciation is claimed. The taxpayer's decision to use immediate expensing for a qualified property or qualified

improvement property in the year the investment cost is incurred is irrevocable for the property unless specifically authorized by the Oklahoma Tax Commission.

SUBCHAPTER 21. OKLAHOMA TAXABLE INCOME FOR SUBCHAPTER "S" CORPORATIONS

710:50-21-1. Subchapter "S" corporations and 512S Oklahoma returns

(a) A corporation having an election in effect under Subchapter S of the Internal Revenue Code shall not be subject to the Oklahoma income tax on the corporation. However, if any of the shareholders of such corporation are nonresidents of Oklahoma during any part of the corporation's taxable year, the corporation shall be taxed for such year on the nonresident shareholder's distributive share of income, unless the corporation files with its return for such year an agreement executed by each nonresident stockholder stating that such nonresident will file an ~~Oklahoma Income Tax Return~~ income tax return reporting his or her portion of Oklahoma taxable income.

(b) The shareholders of a Subchapter "S" Corporation shall include in their taxable income their distributive share of such corporation's ~~Federal~~ federal income, subject to the modifications as set forth in 68 O.S. §2358 and 68 O.S. §2362.

(c) For tax years beginning on or after January 1, 2023, a Subchapter "S" Corporation has the option for immediate and full expensing of qualified property and qualified improvement property by deducting the full cost of these expenditures in the tax year in which the cost is incurred or the property is placed in service. [68 O.S. § 2358.6A] If this option is taken, amounts that are depreciated for federal income tax purposes shall be added back to the distributive share of such corporation's federal income in the year the depreciation is claimed. The taxpayer's decision to use immediate expensing for a qualified property or qualified improvement property in the year the investment cost is incurred is irrevocable for the property unless specifically authorized by the Oklahoma Tax Commission.

(d) A Subchapter "S" corporation that files its return without including necessary nonresident shareholder agreements, shall be taxed on such nonresident(s) shareholders distributive share of income. The method of filing the return shall be irrevocable for each tax period once the return is filed. However, if a nonresident shareholder fails to file his or her individual ~~Oklahoma Income Tax Return~~ income tax return the corporation will be assessed the tax.

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME**

RULE IMPACT STATEMENT

Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 50 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: The proposed amendment to Section 710:50-15-49 implements the provisions of SB 401 which provides for a 100% income tax exemption for retirement benefits received from any component of the Armed Forces of the United States, effective for tax year 2022 and subsequent tax years. [68:2358]

The proposed amendment to Section 710:50-15-63 and promulgation of new Section 710:50-15-118 implements the provisions of HB 3088 which eliminates the existing \$20,000 annual income tax deduction for nonrecurring adoption expenses and enacts a new, refundable income tax credit for nonrecurring adoption expenses, beginning for tax year 2023. [68:2358, 2357.601]

The proposed amendments to Sections 710:50-17-51 and 710:50-21-1 and the promulgation of new Sections 710:50-15-69.1 and 710:50-19-5 implement the provisions of HB 3418 which authorized the decoupling of bonus depreciation; the 100% bonus depreciation rate for qualified property is made permanent and Oklahoma taxpayers may elect to not follow the federal bonus depreciation phase-out schedule. [68:2358.6A]

The proposed amendment to Section 710:50-15-81 implements the provisions of SB 1857 which amended the credit for qualified clean-burning motor vehicle fuel property. [68:2357.22]

Sections 710:50-15-95, 710:50-15-97, 710:50-15-98, 710:50-15-99, 710:50-15-104, 710:50-15-112 have been revoked; these tax incentives have either been repealed or sunsetted and are no longer available and can no longer be claimed on the Oklahoma income tax return. [68: 2357.100, 2357.203, 2357.67, 2357.102, 2357.46, 2357.402,

CLASSES AFFECTED: All individual income taxpayers and corporate income taxpayers, including but not limited to taxpayers receiving military retirement benefits, taxpayers who have adoption expenses, and taxpayers who elect to take bonus depreciation.

PERSONS BENEFITED: All taxpayers affected by this rulemaking action may benefit; it updates the Tax Commission's rules consistent with recent legislation.

PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS: There are no anticipated increase to costs associated with the proposed rule changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The rulemaking action does not levy, implement, or increase an existing fee.

PROBABLE COSTS TO THE AGENCY: Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule changes at this time.

SMALL BUSINESS IMPACT: After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

ALTERNATIVE METHODS AND COSTS OF COMPLIANCE: There are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of this proposed rules. No formalized compliance cost minimization measures have been pursued.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED: The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

DATE PREPARED: December 13, 2022